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11

12 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
13 **EASTERN DISTRICT OF WASHINGTON**

14 DAVID KRZESNI, an individual,

Case No.

15 Plaintiff,

COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL

16 vs.

17 WELLPINIT SCHOOL DISTRICT, a  
legally separate body corporate or  
political; and JOHN ADKINS, an  
individual,

18 Defendants.

19  
20  
21  
22  
23  
24 “Often the best source of information about waste, fraud, and abuse in  
25 government is an existing government employee committed to public  
integrity and willing to speak out. Such acts of courage and patriotism,  
which can sometimes save lives and often save taxpayer dollars, should  
be encouraged rather than stifled ...”

26  
27  
28 Former United States President Barack Obama.

COMPLAINT FOR DAMAGES - 1

1  
2                   **COMPLAINT**  
3

4 Plaintiff, David Krzesni, (“a protected whistleblower”) through counsel and  
5 pursuant to Title 41, United States Code, section 4712, and under Washington’s  
6 common law tort for wrongful discharge which also protects whistleblowers,  
7 alleges that he was retaliated against and discharged from employment with the  
8 Wellpinit School District No. 49 (“School District”) for making a protected  
9 whistleblower disclosure by reporting abuse of federal government funds. As  
10 grounds therefore, Plaintiff alleges as follows:  
11  
12

13                   **JURISDICTION AND VENUE**  
14

- 15     1.     The Court has jurisdiction of this lawsuit under 28 U.S.C. §§ 1331 and  
16 1343(a) (3).
- 17     2.     Venue is proper under 28 U.S.C. § 1391(b) (2).

18                   **NOTICE OF TORT CLAIM & EXHAUSTION OF**  
19                   **ADMINISTRATIVE REMEDIES**  
20

21     3.     A proper notice of tort claim was filed and served on the School  
22 District pursuant to RCW 4.96.020 on August 4, 2023. More than 60 days have  
23 passed since the service and filing of the tort claim.  
24

25     4.     Mr. Krzesni made a complaint to the Department of Education Office  
26 of Inspector General on July 12, 2023. Over 210 days have passed since Mr. Krzesni  
27 filed that complaint with the Department of Education’s Office of Inspector General.  
28

1 Accordingly, Mr. Krzesni has exhausted his pre-suit administrative remedies for  
2 bringing his federal claim.  
3

4 **PARTIES**

5 5. Plaintiff is a citizen of the United States and whose former address  
6 while employed with the School District was 24214 N. Westlake Dr. Nine Mile  
7 Falls, WA, 99206. Nine Mile Falls is in both Spokane and Stevens County,  
8 Washington. Plaintiff's current address is 93 Beeson Rd, Sequim, Washington  
9 98382.  
10  
11

12 6. Defendant, School District, is a public school district PK, K-12 located  
13 at 6231 Old School Rd. Wellpinit, Washington 99040.  
14

15 7. Defendant, John Adkins, is the Superintendent of School District and  
16 is the supervisor, member of management or agent of the School District who  
17 initiated the retaliatory discharge of Plaintiff.  
18

19 **STATEMENT OF FACTS**  
20

21 8. Plaintiff realleges the above paragraphs 1 through 6 as if fully set forth  
22 herein.  
23

24 9. The School District hired Plaintiff on January 10, 2023, to the position  
25 of Project Director for the Department of Education Native Youth Community  
26 Project grant. This was a five-year grant. Plaintiff was of the expectation that he  
27 would oversee the entire five-year grant. Plaintiff had a written personnel contract  
28

1 with the School District effective January 10, 2023, through September 30, 2023,  
2 but had the expectation this would roll over into succeeding years to the end of the  
3 grant.  
4

5       10. On January 11, 2023, Plaintiff learned that the School District intended  
6 to use Native Youth Community Project (NYCP) grant funds for a trip to Hawaii.  
7 Having just started his job, Plaintiff was of the understanding that the Department  
8 of Education had approved use of NYCP funds for the Hawaii trip. However,  
9 something about the Hawaii trip and using federal money for it did not sit right with  
10 Plaintiff.  
11

12       11. On February 10, 2023, Plaintiff had conferred via Microsoft Teams  
13 with Donna Bussell, NYCP Program Officer, Office of Indian Education about use  
14 of federal grant money for travel and per diem. Ms. Bussell stated that per diem was  
15 not allowed for student travel, but that an incentive was possible.  
16

17       12. On February 21-22, 2023, Plaintiff had meetings with Rainy Anderson  
18 (School District's Business Manager) and Laina Walker (the middle school and  
19 high school principal for the School District). In both meetings, Plaintiff expressed  
20 concerns about the cost of the trip and conveyed the information he had received  
21 from Ms. Bussell. In the meeting on February 21, 2023, Plaintiff expressed to Ms.  
22 Anderson that he was genuinely concerned about justifying expenses. That is about  
23  
24  
25  
26  
27  
28

1 the time Plaintiff realized the Department of Education must not be aware of the  
 2 plans.  
 3

4       13. Ms. Anderson and Plaintiff also discussed that the School District had  
 5 planned to pay students who attended a large per diem. Ms. Anderson and Plaintiff  
 6 agreed that the School District would provide a smaller “incentive” instead of a per  
 7 diem, since this was not allowed per Ms. Bussell.  
 8

9       14. Ms. Anderson and Plaintiff met the following day February 22, 2023,  
 10 with Ms. Walker to discuss the incentive versus per diem and to go over the budget  
 11 for the trip. That is also the point where Plaintiff shared with Ms. Walker that the  
 12 Department of Education had not given the School District permission to utilize the  
 13 funds.  
 14

15       15. On February 22, 2023, Plaintiff discussed his concerns about the trip  
 16 with the School District’s program evaluator Noe Medina. Mr. Medina also  
 17 expressed that he had concerns about the cost of the Hawaii trip and that the School  
 18 District could use other funds if necessary.  
 19

20       16. On February 27, 2023, Plaintiff addressed the guidelines for the  
 21 Hawaii trip with Donna Bussell via an email communication. Ms. Bussell advised  
 22 Plaintiff accordingly in an email communication that the NYCP grant could not pay  
 23 for the Hawaii trip:  
 24

25       On Mon, Feb 27, 2023, at 10:23 AM Bussell, Donna  
 26 [donna.bussell@ed.gov](mailto:donna.bussell@ed.gov) wrote:  
 27

1  
2 Hi David,

3 Just quickly reviewing the budget and I see travel to Hawaii. This was  
4 not in the original grant application therefore it will not be approved.

5 ... If you could revise the budget that would be great. Remember to  
6 adhere to the grant narrative and objectives when revising the budget.

7 Thank you.

8 17. Plaintiff immediately told Kim Ewing, the elementary school principal,  
9 that Ms. Bussell said the School District cannot use the grant funds for the Hawaii  
10 trip. Plaintiff discussed with Ms. Ewing that he would follow up with Ms. Bussell  
11 to ask whether the School District could further discuss it. At that time, Plaintiff  
12 and Ms. Ewing discussed that it would be possible to utilize other funds. Plaintiff  
13 and Ms. Ewing agreed that they would attempt to get approval, but that they would  
14 use other funds in the event they were not able to obtain approval.

15 18. On or around February 27, 2023, Plaintiff told Ms. Anderson that the  
16 Department of Education said the School District could not use grant funds for the  
17 Hawaii trip. Ms. Anderson told Plaintiff that other funds would be used for the  
18 Hawaii trip.

19 19. From March 6<sup>th</sup> through the 14<sup>th</sup>, 2023, Plaintiff attended the Hawaii  
20 trip with the understanding that grant money was not paying for it.

21 20. On March 16, 2023, (after the Hawaii trip) Plaintiff had a follow-up  
22 conversation with Mr. Medina. Plaintiff reiterated to Mr. Medina in the meeting  
23 that the NYCP could not fund the trip. On multiple occasions Mr. Medina affirmed  
24

1 Plaintiff's concerns about spending, discussed the possibility of audit exceptions,  
 2 and said that he would facilitate a conversation about that with the School District.  
 3

4       21. On April 12, 2023, at 1:00 pm Ms. Anderson told Plaintiff that the  
 5 NYCP funds **were used** for the Hawaii trip. This happened at an in-person meeting  
 6 while Plaintiff was preparing the annual performance report for the grant. Plaintiff  
 7 started the meeting by discussing our upcoming annual performance report. Plaintiff  
 8 said that he was nervous because the budget for the School District was not  
 9 completely approved, and the Hawaii trip was unresolved. Ms. Anderson told  
 10 Plaintiff she had already drawn down the funds for the trip. Plaintiff said that he  
 11 was not aware the funds had been drawn down. Ms. Anderson stated "we'd return  
 12 the money" if the Department of Education had a problem with the School District  
 13 using money for the trip. The meeting ended with Plaintiff feeling uncomfortable.  
 14

15       22. On April 27, 2023, Plaintiff reported to the Department of Education  
 16 the use of federal grant money for the Hawaii trip and attempted to justify the  
 17 spending. After submitting the report, Plaintiff emailed Donna Bussell, the School  
 18 District's program officer at the Department of Education to request a video call.  
 19 Plaintiff also asked Jennifer Lebret, director for a separate NYCP grant held by the  
 20 Spokane Tribe of Indians to join the meeting.  
 21

22       23. On May 8, 2023, Ms. Lebret and Plaintiff met with Ms. Bussell.  
 23 Plaintiff explained that he was not aware until preparing the report that NYCP funds  
 24

were used for the Hawaii trip. Plaintiff's prior understanding was that the School District had used other funds when Plaintiff notified them that the expenditure was not approved by the Department of Education. Plaintiff told Ms. Bussell that Plaintiff felt obligated to include that expenditure in the Annual Performance Report (APR) and attempt to justify it, but that Plaintiff also wanted to be honest with them that he had not authorized it and that he had several concerns with the trip to Hawaii and the School District's spending.

24. On May 10, 2023, Ms. Bussell forwarded to Plaintiff an email from Ms. Anderson which was originally sent on May 9, 2023. The email was requesting a meeting between Ms. Bussell and the School District's superintendent, John Adkins.

25. On May 16, 2023, at 1:28 PM, Ms. Bussell emailed Plaintiff, Ms. Anderson, Mr. Adkins, and others that the grant money to the School District was being placed on "reimbursement status."

26. Hours later after the email from Ms. Bussell, on May 16, 2023, Plaintiff was called into a meeting with Mr. Adkins and Ms. Anderson. Plaintiff was notified by Mr. Adkins that his contract with the School District would not be renewed when it expired on September 30, 2023.

27. Multiple courts hold that non-renewal of an employment contract is a material adverse action. *Black v. Brewer*, 302 F. App'x 669, 670-671 (9<sup>th</sup> Cir. 2008);

*Ortiz v. Alvarez*, 341 F. Supp. 3d 1087, 1103 (E.D. Cal. 2018 ); *Leibowitz v. Cornell Univ.*, 584 F.3d 487 (2d Cir. 2009) (holding that "a non-renewal of an employment contract itself is an adverse employment action"); *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315,320 (3rd Cir. 2008)( "The failure to renew an employment arrangement, whether at will or for a limited period of time, is an employment action, and an employer violates Title VII if it takes an adverse employment action for a reason prohibited by Title VII."); *Carter v. Univ. of Toledo*, 349 F.3d 269, 270-71 (6th Cir. 2003) (reversing district court's grant of summary judgment in the employer's favor on plaintiffs Title VII claim in connection with employer's failure to renew her employment contract); *Minshall v. McGraw Hill Broadcasting Co., Inc.* , 323 F.3d 1273, 1279-82 (10th Cir. 2003) (finding sufficient evidence that an employer unlawfully discriminated against an employee in finding not to renew his contract); *Mateu-Anderegg v. School Dist. Of Whitefish Bay*, 304 F.3d 618 (7th Cir. 2002) (finding it "undisputed ... that she suffered an adverse action" where plaintiff challenged the non-renewal of her contract.).

## CLAIMS

28. Plaintiff realleges the above paragraphs 1 through 27 as if fully set forth herein.

**A. Federal Claim against School District and Adkins.**

1       29. Federal law protects *whistleblowers* like Plaintiff under Title 41,  
2 United States Code, Section 4712 (“Act”).  
3

4       30. It is illegal for an employee of a Federal Contractor, subcontractor,  
5 grantee, or subgrantee or personal services contractor to be discharged, demoted, or  
6 otherwise discriminated against for making a protected *whistleblower* disclosure.  
7

8       31. Plaintiff is a protected *whistleblower* under the Act because he was an  
9 employee of the School District who is a *grantee* of federal funds who disclosed  
10 information that Plaintiff reasonably believed was evidence of *an abuse of authority*  
11 *relating to a Federal grant.*  
12

13       32. The term “*abuse of authority*” means an arbitrary and capricious  
14 exercise of authority that is inconsistent with the mission of the executive agency  
15 concerned or the successful performance of a contract or grant of such agency.  
16

17       33. Plaintiff is also a protected *whistleblower* under the Act because he  
18 disclosed information to a management official or other employee of the *grantee*  
19 School District.  
20

21       34. Plaintiff was subjected to a retaliatory discharge in close proximity to  
22 his disclosure as a *protected whistleblower* under the Act by the School District and  
23 Mr. Adkins when he was informed on May 16, 2023, that his contract would not be  
24 renewed with the School District when it expired on September 30, 2023.  
25

1       35. As a result of the conduct of Defendants, Plaintiff has sustained  
 2 substantial damages both economic and non-economic.  
 3

4           ***B. State Wrongful Discharge Claim against School District and Adkins.***

5       36. Plaintiff also asserts a separate claim for common law tort of wrongful  
 6 discharge under Washington law against Defendants.  
 7

8       37. “Washington courts have generally recognized the public policy  
 9 exception when an employer terminates an employee as a result of his or her (1)  
 10 refusal to commit an illegal act, (2) performance of a public duty or obligation, (3)  
 11 exercise of a legal right or privilege, or (4) in retaliation for reporting employer  
 12 misconduct.” *Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 208 (2008).  
 13

14       38. Plaintiff reported employer misconduct, here the unauthorized use of  
 15 grant money to pay for a trip to Hawaii.  
 16

17       39. Defendant Adkins had clear animus towards Plaintiff based upon his  
 18 exercising his rights as a protected *whistleblower* as Defendant Adkins terminated  
 19 Plaintiff’s employment (effective September 30, 2023), within hours of learning  
 20 that the District’s grant money was being placed in “reimbursement” status.  
 21

22       40. As a result of the conduct of Defendants, Plaintiff has sustained  
 23 substantial damages both economic and non-economic.  
 24

## **PRAYER FOR RELIEF**

Plaintiff requests the following relief from the Defendants under state and federal law:

- A. Injunctive and Declaratory relief.
  - B. Compensatory and Exemplary Damages.
  - C. Lost wages, prejudgment interest, front pay, and adverse tax consequences of any award for economic damages.
  - D. Emotional Distress and Mental Anguish Damages.
  - E. Attorney Fees and Costs.
  - F. All other relief that is just and equitable.

DATED this 8<sup>th</sup> day of February 2024.

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